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No. 88-1388

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

LO SHIPPERS ACTION COMMITTEE,
Petitioner,
v.
THE UNITED STATES OF AMERICA,
THE INTERSTATE COMMERCE COMMISSION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF RESPONDENT RAILROADS AND ASSOCIATION OF AMERICAN RAILROADS IN OPPOSITION TO PETITION

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QUESTIONS PRESENTED

1. Whether under 49 U.S.C. § 11122 compensation paid by railroads for use of freight cars must invariably equal or exceed amounts necessary to recoup the full cost of owning and maintaining the cars plus a guaranteed return on investment, even when such compensation would conflict with other statutory objectives and harm national transportation interests.

2. Whether a statute providing that the ICC's regulations "may" include compensation for the use of freight cars compels the ICC to establish such regulations on demand.

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BRIEF OF RESPONDENT RAILROADS AND ASSOCIATION OF AMERICAN RAILROADS IN OPPOSITION TO PETITION

The respondent railroads listed in Appendix A and the Association of American Railroads, intervenors in the court of appeals below, submit this brief in opposition to the petition for a writ of certiorari filed by LO Shippers Action Committee ("LOSAC").[1]

STATEMENT OF THE CASE

When a railroad transports freight in cars it does not own, it recognizes the value of using the cars in various ways. Traditionally, railroads have paid for the use of

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[1] Appendix A also provides the information required under Rule 28.1.

cars owned by other railroads by making "per diem" payments and for the use of cars owned by shippers and other investors (so-called "private cars") by offering "allowances" to the provider of the car. This case involves the allowances paid by railroads for the use of one type of private car, known as a "covered hopper," which is used to transport bulk commodities such as grain and fertilizer.

1. *The applicable statutes.* Section 11122 of the Interstate Commerce Act (the "Act") authorizes the ICC to adopt car service regulations, including regulations concerning compensation to be paid by railroads for the use of rail cars. See Pet. Cl. The ICC is not required to prescribe compensation under this section but "may" do so if it is able to find, as required by subsection 11122(a), that such regulations will advance statutory goals of adequate equipment acquisition and efficient utilization. 49 U.S.C. § 11122(a).

If the ICC elects to prescribe compensation regulations, subsection (b) requires the Commission to weigh a number of factors in determining the amount of compensation. The first sentence of that subsection specifies several cost factors, such as repair and maintenance costs. The second sentence requires the ICC to consider other transportation and market factors, including the "adequacy of the national freight car supply." 49 U.S.C. § 11122(b).[2]

Another important provision of the Act is also involved. Whenever the ICC oversees the rail industry, its decisions must further the objectives of the National Rail Transportation Policy. 49 U.S.C. § 10101a (set forth in

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[2] Subsection (b) does not appear to govern railroad allowances until the ICC adopts car service regulations. Neither the ICC nor the court of appeals had occasion to reach the railroads' contention that the provision did not apply in this case, where no regulations had been adopted.

Appendix B.)[3] This policy requires the ICC to "allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail" and to "minimize the need for Federal regulatory control." 49 U.S.C. § 10101a(1), (2).

2. *Compensation for the use of private covered hoppers.* The ICC has never prescribed allowances that railroads must pay for using private covered hopper cars. Pet. B3. Even during the decades of intensive federal regulation of rail transportation, those allowances were instead established collectively by railroads, usually after negotiations with groups of car owners such as LOSAC. Because regulated railroad rates for moving freight were generally uniform over competing routes and based on average costs,[4] allowances were also uniform throughout the nation and based on average costs, so that similarly situated shippers would pay identical net charges.

The last of the collective allowance regimes for covered hopper cars, modeled on similarly structured compensation systems for other types of cars, was adopted by the railroads in 1980 after negotiations with LOSAC. Soon afterwards, however, the greatest rail car surplus since the Depression developed throughout the nation, exposing "serious flaws" in those rigid compensation schemes.[5] Most seriously, the compensation formulae caused car rental payments to increase as the demand for and use of cars declined. This startlingly inefficient inversion of the normal rules of supply and demand had especially

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[3] See 49 U.S.C. § 10101; *Coal Exporters Ass'n* v. *United States*, 745 F.2d 76, 94 n.22 (D.C. Cir. 1984), *cert. denied*, 471 U.S. 1072 (1985).

[4] *E.g.*, I. Sharfman, *The Interstate Commerce Commission*, Part III-B (1936).

[5] *Investigation of Tank Car Allowance System*, Ex Parte No. 328 (unpublished decision served Sept. 20, 1985), p. 3. Nine copies of all unpublished ICC decisions cited herein have been lodged with the Clerk of the Court.

perverse effects on covered hopper allowances, because thousands of those cars had been idled by President Carter's embargo on grain sales to the Soviet Union. The ICC blocked irrational increases in the compensation that it had prescribed for other types of cars,[6] and the railroads took the parallel step of declining to increase allowance payments for covered hoppers.

At the same time, traditional car compensation regimes were becoming increasingly anachronistic in the wake of Congress' partial deregulation of the rail industry, which it launched in the "4-R Act" of 1976[7] and expanded in the Staggers Rail Act of 1980.[8] Concluding that federal regulation had contributed heavily to the financial deterioration of the industry and that most rail traffic was subject to competition,[9] Congress eliminated regulation of most rail freight rates, reduced the scope of collective ratemaking, and introduced the railroads to the forces of competition faced every day by other businesses. As a result of these legislative reforms, railroads were compelled to set freight rates individually, in response to competitors' rates.

Freight rates determined by market forces could not easily accommodate uniform national allowances based on average costs. Accordingly, the railroads ceased collective establishment of uniform allowances for covered hoppers in 1983 and all changes in allowances since then have been made by individual railroads (Pet. B4), often in contracts or informal agreements with individual ship-

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[6] *E.g., Investigation of Tank Car Allowance System,* Ex Parte No. 328 (unpublished decision served Nov. 4, 1983); *Suspension of Car Hire Updates,* Ex Parte No. 334 (Sub-No. 7) (unpublished decision served Jan. 2, 1986).

[7] Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31.

[8] Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895.

[9] See *id.* § 2, 94 Stat. 1895, 1896.

pers. Market pressures on rail rates were especially intense in grain transportation, as farmers facing source competition from around the world were forced to seek lower transport costs. Lower rail rates could be achieved only by reducing allowances to market levels, and many grain shippers—including LOSAC members—supported the necessary reductions.[10]

3. *The proceedings below.* LOSAC filed a complaint at the ICC alleging violations of the Act and requesting increased allowances and damages. LOSAC's case was framed narrowly, premised on its arguments that subsection 11122(b) should be read in isolation, that it compels the ICC to prescribe allowances, and that it requires allowances sufficient at all times to guarantee full recovery of the costs of buying and maintaining the existing car fleet, even when the quantity of cars purchased is excessive and other statutory factors favor lower allowances. Because LOSAC contended that the Act required allowances to be doubled in the midst of a covered hopper surplus of historic proportions, the amounts in dispute were substantial.

The ICC held unanimously that it has discretion to determine whether to prescribe allowances. Pet. B15. The Commission also unanimously decided that, if it prescribes allowances, section 11122 requires it to consider factors beyond ownership costs and permits compensation to fluctuate above and below the full cost recovery level,[11]

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[10] The ICC found that grain-hauling railroads generally had reduced freight rates more than they reduced allowances, so that savings were passed directly to shippers. Pet. B25.

[11] "Full cost recovery" is the level of compensation that recoups the original costs of all cars then in service, plus repair and maintenance costs of those cars and a guaranteed return on the capital invested (a guarantee not enjoyed by the railroads when they buy cars or provide transportation). Under normal circumstances, investors in freight cars can expect to recover the costs of providing cars that are needed by shippers for rail transportation, even

depending on the adequacy of national car supply and other transportation policies. *Id.* at B15-16. The agency found that the allowances sought by LOSAC would cause railroad freight rates to rise, reduce the availability of affordable transportation, and discriminate in favor of LOSAC members, all of whom possessed covered hoppers, and against other shippers who did not. *Id.* at B11-14. Holding that LOSAC had failed to demonstrate that any allowance was unlawful (*id.* at B21, B30-31), the ICC dismissed LOSAC's complaint. A majority of the Commissioners saw no reason to enter a prescription for the future.[12]

The ICC's decision was unanimously affirmed in every respect by a panel of the United States Court of Appeals for the District of Columbia Circuit (Circuit Judges Mikva and Sentelle and District Judge Palmieri, sitting by designation). The court of appeals rejected LOSAC's claim that the ICC must prescribe allowances on demand, and it found no merit in LOSAC's argument that section 11122 forbids below-cost allowances. The court concluded that "Congress clearly granted the ICC discretion as to the precise subject at issue here" and it found the ICC's interpretation of section 11122 to be "more than reasonable." Pet. A12.[13] LOSAC's petition for rehearing and suggestion for rehearing *en banc* were denied.

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though rentals may vary above or below the cost recovery level from time to time. LOSAC contends, however, that allowances may never fluctuate below the full cost recovery level and must ensure recovery of all costs, even for unwarranted investments in unneeded cars.

[12] Two Commissioners would have exercised the ICC's discretion to adopt new car service regulations. See Pet. B31-35.

[13] Accordingly, this case is unlike those raising concerns that the D.C. Circuit and the ICC "have rather divergent views of the mandate of the Staggers Act and the nature of the Commission's task thereunder." *ICC* v. *Brae Corp.*, 471 U.S. 1069, 1071 (1985) (Justice White, dissenting).

REASONS FOR DENYING THE WRIT

I. The Court of Appeals' Decision Does Not Present a Federal Question Requiring Supreme Court Review and Does Not Conflict With Precedent of This Court or Any Other Court of Appeals.

The issue in this case is whether section 11122 compels the ICC to prescribe allowances at levels that "guarantee full-cost recovery to car-providing shippers" (Pet. A12) when such allowances would conflict with other statutory requirements and would adversely affect the national transportation system. This is not a difficult question of statutory construction requiring attention from the nation's highest court. Nothing in the language of the statute requires the ICC to set allowances at or above the full cost recovery level. Instead, the statute in terms gives the ICC discretion to prescribe allowances and, should the agency choose to prescribe, instructs it to consider car supply conditions and transportation concerns other than costs.

The court of appeals' parsing of section 11122 cannot be questioned. The court confirmed that the ICC's discretion is established by subsection 11122(a), which provides that ICC regulations "may" include car compensation. Pet. A10. Turning to subsection 11122(b), the court observed that one sentence requires the ICC to consider certain cost factors and the next sentence requires it to consider "market factors," such as the adequacy of car supply. *Id.* at A12. As the court of appeals held, each sentence speaks with the imperative "shall" and Congress provided no ordering priorities, leaving the determination of policy to the ICC. *Id.*[14] Where "Congress has not directly addressed the precise question at issue," an agency's "permissible construction of the statute"

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[14] A traditional function of a specialized administrative agency such as the ICC is to weigh competing statutory requirements in technical areas of agency expertise. See, *e.g.*, *Baltimore & O. R.R.* v. *United States*, 345 U.S. 146, 150 (1953).

should not be disturbed. *Chevron U.S.A.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). The court found the agency's construction to be "more than reasonable." Pet. A12.

The construction of the statute unanimously adopted by the Commission and endorsed by the D.C. Circuit is in complete harmony with the decision of the only other court of appeals to construe section 11122. In *Consolidated Rail Corp.* v. *United States*, 619 F.2d 988, 996 (3rd Cir. 1980), the Third Circuit held that the Commission must weigh the non-cost factors listed in the second sentence of subsection 11122(b), including "factors affecting the adequacy of the national freight car supply," when it regulates car compensation. It may not consider costs alone. The D.C. Circuit takes the same view of what the statute requires.[15]

This construction of the statute follows an unbroken chain of agency rulings since 1980 that permit car compensation under subsection 11122(b) "to fall below the level that would be necessary to cover full ownership costs." *Zone of Reasonableness for Car Hire Charges*, 364 I.C.C. 299, 305 (1980). The ICC has consistently rejected demands by car owners for a "guarantee concerning car compensation or the return on their investment." [16] The present decision conforms to the agency's uniform and reasonable precedent in a technical area committed by Congress to the agency's expertise.[17]

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[15] Accord, *Brae Corp.* v. *United States*, 740 F.2d 1023, 1059 (D.C. Cir. 1984), *cert. denied*, 471 U.S. 1069 (1985).

[16] *Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 746, 760-61 (1983), *aff'd in part and rev'd in part sub nom. Brae Corp.* v. *United States*, 740 F.2d 1023 (D.C. Cir. 1984), *cert. denied*, 471 U.S. 1069 (1985). See also *Suspension of Car Hire Updates*, Ex Parte No. 334 (Sub-No. 7) (unpublished decision served Jan. 2, 1986), p. 1. (Section 11122 "does not require that we prescribe full recovery of ownership costs during periods when demand for cars is weak.")

[17] LOSAC invokes the spector of "severe car shortages" and even a threat to national defense if this construction of the Act is upheld

While ignoring the unanimity of judicial and agency decisions construing section 11122, LOSAC claims that the decision below conflicts with a 1940 decision of this Court in *General American Tank Car Corp.* v. *El Dorado Terminal Co.*, 308 U.S. 422. That decision did not even mention the predecessor of section 11122 but instead involved the ICC's power to prevent excessive allowances and other rebates under the Elkins Act. In that case, the railroads had not filed tariffs providing for payment of allowances directly to shippers as required by former section 15(13) (now 49 U.S.C. § 10747), and, in *dictum* quoted by LOSAC (Pet. 22-23), the Court observed that the shipper could file a complaint with the ICC "to the end" that a tariff be established. The decision says nothing about any agency duty under a different section of the Act (section 11122) to set minimum allowances, nor does it require the ICC to grant relief when a complaint has not been substantiated. There is no conflict or even tension between this Court's opinion in *El Dorado* and the decision below.

II. Congress Has Rejected LOSAC's Argument That Car Compensation Can Never Fall Below the Cost Recovery Level.

LOSAC's challenge stands or falls on its insistence that subsection 11122(b) works only one way, permitting car compensation to exceed the cost recovery level but forbidding lower compensation, regardless of the impact on car supply, other statutory considerations, or national rail transportation policy. LOSAC's argument is not based on the language of the statute but on legislative history that has been superseded by subsequent amend-

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(Pet. 8-10), but its assertion that "no one would have acquired cars" knowing that allowances could fall below the full cost recovery level (Pet. 18) is belied by historical facts. The agency found that the car surplus of the 1980s was created while allowances were far below those demanded by LOSAC and that many allowances had doubled since those acquisitions were made. Pet. B19-20.

ments to the statute. LOSAC's petition ignores the later and extensive legislative history that bears directly upon the statutory language at issue here.

Section 11122 was amended in 1980. As both the court of appeals and the ICC explained, the legislative history of that amendment compels the construction adopted by the ICC. See Pet. A12-13, B17-18. Congress expressly ratified the same ICC construction of the statute challenged here by endorsing a flexible car hire rule proposed by the ICC. *Id.* A13.[18] Moreover, in discussing section 11122, Congress described its expectation that compensation could fluctuate in response to car supply and directed the ICC to allow "marketplace decisions" to govern compensation.[19] This legislative history is determinative of the meaning of section 11122.[20]

Ignoring these specific declarations of the will of Congress, LOSAC focuses instead on Congress' decision not to enact a proposal that would have completely deregu-

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[18] Shortly before the passage of the Staggers Act, the ICC had proposed that the railroads be authorized under section 11122 to adopt "flexible" car hire payments above or below the cost recovery level. *Order to Show Cause for Granting Railroads Flexibility in Setting Per Diem Levels*, 45 Fed. Reg. 41,469 (1980); *Order Granting Railroads Flexibility in Setting Per Diem Levels*, 364 I.C.C. 107, 109 (1980). Congress endorsed this approach, calling upon the ICC to continue "to examine means (such as flexible car hire) of making basic car hire more responsive to market forces . . . ." H.R. Rep. No. 1430 [Conf. Rep.], 96th Cong., 2d Sess. 117 (1980), *reprinted in* 1980 U.S. Code Cong. & Ad. News 4110, 4149.

[19] *Id.* at 118, *reprinted in* 1980 U.S. Code Cong. & Ad. News at 4150.

[20] Before the ICC and the court below, LOSAC resorted to after-the-fact complaints by two congressmen that their views were not adequately considered in the conference committee report on the Staggers Act. Such complaints cannot cast doubt on a report debated by Congress (126 Cong. Rec. 27472-3 (1980)) and approved after consideration of objections (*id.* at 28428, 28434), and the complaints did not pertain to section 11122 in any event.

lated car compensation. Pet. 19-21. Congressional inaction normally does not constitute an expression of legislative intent.[21] That is especially clear in this case. Congress' failure to eliminate the Commission's authority over compensation clearly cannot mean that the agency's authority should be interpreted in a manner flatly inconsistent with express statements of Congress' intent.[22]

LOSAC argues that the court of appeals should have focused on the language of the statute prior to a 1978 recodification.[23] Even if the amendment of the section two years later is disregarded, the predecessor provision, former 49 U.S.C. § 1(14)(a), does not aid LOSAC. Like section 11122, it gave the Commission discretion to adopt car service regulations (the Commission "may, upon complaint of any interested party or upon its own initiative . . . establish . . . regulations") and, in two separate sentences, required the Commission to weigh both cost and non-cost factors in any compensation regulations it might adopt. Pet. C3. In that version, the non-cost factors were listed before the cost-related factors, dispelling any notion that the present order of sentences is significant.

Ultimately, LOSAC's challenge is based on the 1966 legislative history of section 1(14)(a). But Congress' intent in 1966 is irrelevant. Section 1(14)(a) was thoroughly revised ten years later and, after recodifica-

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[21] *United States* v. *Price*, 361 U.S. 304, 310-11 (1960) ("non-action by Congress affords the most dubious foundation for drawing positive inferences").

[22] Moreover, Congress simultaneously rejected an amendment that could have required the agency to prescribe car compensation during a car shortage—an amendment that would be unnecessary under LOSAC's view of the statute. See H.R. 7235, § 307(b), *reprinted in* H.R. Rep. No. 1035, 96th Cong., 2d Sess. 17 (1980).

[23] The parties agree that this 1978 recodification of the Act was not intended to change its substance. Pub. L. No. 95-473, § 3(a), 92 Stat. 1337, 1466 (1978).

tion, was amended again in 1980. The language that LOSAC claims permitted only cost-based allowances or higher "incentive" allowances (Pet. 13) was eliminated in 1976, and the incentive provision was scrapped in 1980.[24]

III. The Court of Appeals Correctly Found That the ICC is Not Obligated to Prescribe Covered Hopper Allowances on Demand.

LOSAC's insistence that the ICC must prescribe allowances on demand is impossible to square with the language of the statute. Observing that "shall" is the language of command (Pet. 24), LOSAC ignores the fact that the statute says that the ICC's regulations "may" include compensation. 49 U.S.C. § 11122(a). The court of appeals addressed LOSAC's contention at length and we commend its analysis. See Pet. A10-12.

Nothing in section 11122 or any other provision of the Act alters the usual rule that complainants must prove that they are entitled to relief under the Act.[25] In this instance, the ICC correctly found that LOSAC had made "no effort" to show that allowances were unlawful on the basis of all the factors to be considered under section 11122. Pet. B30-31. The ICC accordingly had no duty to provide relief.

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[24] Moreover, LOSAC misreads the 1966 legislative history. While Congress acted then to address a severe car shortage, its objective was to expand—not to contract—the ICC's flexibility. The 1966 version of section 1(14)(a) gave the ICC the power to adopt "incentive" car compensation above the cost-recovery level, because an earlier district court decision had suggested that such compensation might be impermissible. See S. Rep. No. 386, 89th Cong., 1st Sess. 7, 16-17 (1965); H.R. Rep. No. 1183, 89th Cong., 1st Sess. 3 (1965), *reprinted in* 1966 U.S. Code Cong. & Ad. News 2227, 2229; *Palmer* v. *United States*, 75 F. Supp. 63 (D.D.C. 1947).

[25] See, *e.g.*, *Louisville & N. R.R.* v. *ICC*, 238 U.S. 1 (1915); *Potomac Elec. Power Co.* v. *Consolidated Rail Corp.*, 362 I.C.C. 169, 185 (1980).

Nor does the ICC's discretionary decision not to prescribe allowances constitute "de facto" deregulation contravening the requirements of 49 U.S.C. § 10505. Pet. 25-26. This case was an exercise in regulation. Although LOSAC did not prevail, the ICC exercised its jurisdiction and made a reasoned decision not to prescribe allowances in this case. Its decision also contemplated future complaints by parties able to offer a more persuasive showing that allowances are inadequate (Pet. B31), and the agency unquestionably retains the power to prescribe allowances in the future. See Pet. A14. That is not deregulation.

CONCLUSION

The petition for a writ of certiorari should be denied.

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1515 Arapahoe Street
Denver, CO 80217

ROBERT G. SHEPHERD, JR.
Illinois Central
Railroad Company
1155 21st Street, N.W.
Washington, DC 20036

F. BLAIR WIMBUSH
Norfolk Southern Corporation
One Commercial Place
Norfolk, VA 23510-2191

LARRY D. STARNS
Soo Line Railroad Company
105 South Fifth Street
Minneapolis, MN 55402

LOUIS P. WARCHOT
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, CA 94105

MARK A. KALAFUT
Union Pacific Railroad
Company
1416 Dodge Street
Omaha, NE 68179

Attorneys for Respondent Railroads
and Association of American Railroads

APPENDICES

APPENDIX A

1. The respondents submitting this brief are:

Association of American Railroads
Atchison, Topeka and Santa Fe Railway Company, The
Burlington Northern Railroad Company
Chicago & North Western Transportation Company
Consolidated Rail Corporation
CSX Transportation, Inc.
Denver and Rio Grande Western Railroad Company, The
Illinois Central Railroad Company
Kansas City Southern Railway Company, The
Norfolk & Western Railway Company
Southern Pacific Transportation Company
Southern Railway Company
Soo Line Railroad Company
Union Pacific Railroad Company

2. The names of parent companies and non-wholly owned subsidiaries or affiliates of the respondent railroads are:

Santa Fe Southern Pacific Corp. is the parent of respondent THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY. Subsidiaries and affiliates are:

Central California Traction Company
Santa Fe Energy Partners, L.P.
Santa Fe Natural Resources, Inc.
Santa Fe Pacific Pipeline Partners, L.P.
Southern Pacific Company
Sunset Railway Company
Trailer Train Company

Burlington Northern Inc. is the parent of respondent BURLINGTON NORTHERN RAILROAD COMPANY. Subsidiaries and affiliates are:

Belt Railway Company of Chicago, The
Camas Praire Railroad Company

Davenport, Rock Island and North Western Railway Company
Denver Union Terminal Railway Company, The
Houston Belt & Terminal Railway Company
Iowa Transfer Railway Company
Kansas City Terminal Railway Company
Keokuk Union Depot Company
Longview Switching Company
Paducah & Illinois Railroad Company
Portland Terminal Railroad Company
Trailer Train Company
Wichita Union Terminal Railway Company, The

CNW Corporation is the parent of respondent CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY. Subsidiaries and affiliates are:

Iowa Transfer Railway Company
Kansas City Terminal Railway Company
MT Properties
Peoria and Pekin Union Railway Company
Railbox Company
Railroad Association Insurance, Ltd.
Trailer Train Company
Transportation and Railroad Assurance Company, Ltd.

Respondent CONSOLIDATED RAIL CORPORATION has no corporate parent. Subsidiaries and affiliates are:

Akron and Barberton Belt Railroad Company
Albany Port Railroad Corporation
American Casualty Excess Insurance, Ltd.
Belt Railway Company of Chicago, The
Calumet Western Railway Company
Chicago and Western Indiana Railway Company
Indiana Harbor Belt Railroad Company
Lakefront Dock & Railroad Terminal Company
Monongahela Railway Company
Nicholas, Fayette & Greenbrier Railroad Company

Pennsylvania Truck Lines, Inc.
Peoria & Pekin Union Railway Company
Pittsburgh, Chartiers & Youghiogheny Railway Company
Railroad Association Insurance, Ltd.
St. Lawrence and Adirondack Railway Company, Inc.
Trailer Train Company
Transportation Data Xchange

CSX Corporation is the parent of respondent CSX TRANSPORTATION, INC. Subsidiaries and affiliates are:

Akron and Barberton Belt Railroad Company, The
Akron Union Passenger Depot Company, The
Allegheny and Western Railway Company
Augusta and Summerville Railroad Company
Baltimore and Cumberland Valley Rail Road Extension Company, The
Baltimore and Philadelphia Railroad Company, The
Baronial Transportation Company
Beaver Street Tower Company
Belt Railway Company of Chicago
Central Florida Pipeline Corporation
Central Railroad Company of South Carolina, The
Central Transfer Railway and Storage Company, The
Chatham Terminal Company
Chicago and Western Indiana Railroad Company
Clearfield and Mahoning Railway Company
Cleveland Terminal & Valley Railroad Company
Country Wide Transport Services, Inc.
CSX Services, Inc.
Dayton and Michigan Railroad Company
Dayton and Union Railroad Company
Delaware and Bound Brook Railroad Company
First Georgia Development Corporation
Home Avenue Railroad Company, The
Lakefront Dock and Railroad Terminal Company, The

Mid Allegheny Corporation
Monongahela Railway Company, The
Norfolk and Portsmouth Belt Line Railroad Company
North Charleston Terminal Company
Paducah & Illinois Railroad Company
Richmond, Fredericksburg and Potomac Railroad Company
Richmond-Washington Company
Staten Island-Cranford, Inc.
Terminal Railroad Association of St. Louis
Trailer Train Company
Wesjax Development Company
Winston-Salem Southbound Railway Company
Woodstock & Blocton Railway Company
Yukon Pacific Corporation

The Anschutz Corporation is the parent of Rio Grande Industries, Inc., which in turn is the parent of respondents THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY and SOUTHERN PACIFIC TRANSPORTATION COMPANY. Subsidiaries and affiliates are:

St. Louis Southwestern Railway Company
SPTC Holding, Inc.
Trailer Train Company

Prospect Group, Inc. is the parent of Illinois Central Transportation Company, which in turn is the parent of respondent ILLINOIS CENTRAL RAILROAD COMPANY. Subsidiaries and affiliates are:

Belt Railway Company of Chicago
Blue Island Railroad Company
Chicago Intermodal Company
Co-op Oil Company
Dairy Cattle Congress, The
Digitech, Inc.
GM&O Land Company
Great Plain Supply Company

Kensington and Eastern Railroad Company
Mississippi Valley Corporation
Mississippi Export Railroad Company
Paducah & Illinois Railroad Company
Peabody Short Line Railroad
Peoria & Pekin Union Railroad Company
Pullman Company, The
South Chicago Railroad Company, The
Terminal Railroad Association of St. Louis
Trailer Train Company
Waterloo Railway Company
Wickes Companies, Inc.

Kansas City Southern Industries, Inc. is the parent of respondent THE KANSAS CITY SOUTHERN RAILWAY COMPANY. Subsidiaries and affiliates are:

ALC Communications
DST Systems, Inc.
First of Michigan Capital Corporation
Louisiana & Arkansas Railway Company
Williams Telecommunications Group, Inc.

Norfolk Southern Corporation is the parent of respondents NORFOLK & WESTERN RAILWAY COMPANY and SOUTHERN RAILWAY COMPANY. Subsidiaries and affiliates are:

Algers, Winslow and Western Railway Company
Atlantic and North Carolina Railroad Company
1575 Eye Street Associates (Limited Partnership)
High Point, Randleman, Asheboro and Southern Railroad Company
Mobile and Birmingham Railroad Company
North Carolina Midland Railroad Company, The
North Carolina Railroad Company, The
Richmond, Fredericksburg and Potomac Railroad Company
700 North Fairfax Street Limited Partnership
The South Western Rail Road Company

State University Railroad Company
Wabash Railroad Company
Wheeling and Lake Erie Railway Company, The
Yadkin Railroad Company

Respondent SOO LINE RAILROAD COMPANY is a subsidiary of Soo Line Corporation, 56 percent of whose stock is owned by Canadian Pacific Limited. Subsidiaries and affiliates are:

Algoma Steel Corporation, Limited, The
AMCA Holdings (U.K.) Limited
AMCA International Limited
American Reinforcing Inc.
Amtel Chimie et Plastiques
Arrendadora Korco, S.A. de C.V. (Mexico)
Bilsa, S.A.
Bomag Australia PTY Ltd.
Bomag-Nenck B.m.b.H.
Bomag S.A.F.
Brosses Osborn S.A.
Brushes International PLC (U.K.)
Brushes International do Brazil
Canada Line Agencies Limited, The
Canada Line Limited, The
Canada Line Services Limited, The
Canadian Pacific Enterprises Limited
Canadian Pacific Oil and Gas Norway A/S
CanPac Maritime Agencies Limited
Cascade Pipe Line Limited
Cherry Burrell Holdings Corporation
Cominco Ltd.
Compaloc
Corporate Foods Limited
Dandix, Inc. (U.S.A.)
Dendix Brushes Limited (U.K.)
Desa Industries (U.K.) Limited
Dominion Atlantic Railway Company, The
Dominion Bridge Sultzer, Inc.

Eastern Bakeries Limited
Energy Development (Management) Limited
Falt Towing Ltd.
Gem Power Brushes, Limited (U.K.)
Giddings & Lewis Foundation Inc.
Great Lakes Forest Products Limited
Greenex A/S
Hawaiian Western Steel Limited
Intrumentation Services, S.A.
Imodco International Inc.
KCL Leasing
Kingston and Pembroke Railway Company, The
Koering Leasing
Koering Leasing Partners
Kremzar Gold Mines Limited
Lake Champlain and St. Lawrence Junction Railway Company, The
Lake Erie and Northern Railway Company, The
Lake St. Joseph Iron Inc.
Litwin Arabia Ltd.
Litwin (U.K.) Limited
Manitoba and North Western Railway Company of Canada
Maple Shipping Company, (U.K.) Limited
Marathon Aviation Terminals Limited
Massawippi Valley Railway Company
Mayo Forest Products Ltd.
Montreal and Atlantic Railway Company, The
National Hardware Specialties Limited
Nippon Bomag C., Ltd. (Japan)
OTM Limited
Ontario and Quebec Railway Company
Orbs-Johnson Systems, Inc.
Osborn Foundry Machinery, Ltd.
Osborn International G.m.b.H. (W. Germany)
PanCanadian Petroleum Denmark A/S
PanCanadian Petroleum Limited
Pine Point Mines Limited

Pitt Street Developments Limited
Polytec S.A.R.L.
Princeton Gold Mines Limited
Ptarmigan Mines, Limited
Robison Mines Limited
Rycon Mines Limited
Societe Anonyme des Machines Osborn (France)
St. Lawrence and Ottawa Railway Company, The
Steep Rock Resources Inc.
Sunloch Mines Limited
Sunro Mines Limited (N.P.L.)
T.E.B.A. B.V.I.O. (The Netherlands)
Telsat Canada
Toronto, Grey and Bruce Railway Company
Toronto Terminals Railway Company, The
Trailer Train Company
Vestgron Mines Limited
Village Green Mall Ltd.
Vol Mines Limited
Webb Jarratt & Company Limited
Western Fabricators Inc.
Western Metal Products Inc.

Union Pacific Corporation is the parent of respondent UNION PACIFIC RAILROAD COMPANY. Subsidiaries and affiliates are:

Missouri-Kansas-Texas Railroad Company
Missouri Pacific Railroad Company
Oklahoma Kansas and Texas Railroad Company
Overnite Transportation Company
Texas & Pacific Railway Company

APPENDIX B

49 U.S.C. § 10101a. Rail transportation policy

In regulating the railroad industry, it is the policy of the United States Government—

(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Interstate Commerce Commission;

(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;

(6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;

(7) to reduce regulatory barriers to entry into and exit from the industry;

(8) to operate transportation facilities and equipment without detriment to the public health and safety;

(9) to cooperate with the States on transportation matters to assure that intrastate regulatory jurisdiction is exercised in accordance with the standards established in this subtitle;

(10) to encourage honest and efficient management of railroads and, in particular, the elimination of noncompensatory rates for rail transportation;

(11) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;

(12) to encourage fair wages and safe and suitable working conditions in the railroad industry;

(13) to prohibit predatory pricing and practices, to avoid undue concentrations of market power and to prohibit unlawful discrimination;

(14) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information; and

(15) to encourage and promote energy conservation.

(Added Pub. L. 96-448, Title I, § 101(a), Oct. 14, 1980, 94 Stat. 1897.)